Road Sprinkler Fitters, Local 669, U.A., AFL–CIO (American Automatic Fire Protection, Inc.) *and* Raymond D. Woodruff. Case 16–CB–1958

11 January 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 17 June 1983 Administrative Law Judge Robert A. Gritta issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order, with a modified remedy.

AMENDED REMEDY

As part of the remedy designed to make Woodruff whole for the Respondent's unlawful actions toward him, the judge ordered the Respondent "to tender to Woodruff the difference between his actual wages during the months of January and February 1982 and the contract wages of $14.86 an hour based upon the grievance settled between the Employer and the Respondent on 2-11-82." In addition, the judge ordered that, if the Respondent processed another similar grievance for the time period after February 1982, the Respondent should similarly reimburse Woodruff. The Respondent excepts to the imposition of any remedial obligations based on the grievance settlement, contending that the grievance settlement was not encompassed within the General Counsel's complaint and that no issues pertaining to the grievance settlement were litigated at the hearing. We find merit in the Respondent's exception.

Sometime in February 1982 the Respondent filed a grievance over American's failure to adhere to the wage and fringe benefit provisions of the collective-bargaining agreement.[2] On 11 February 1982 American and the Respondent signed a written settlement of the grievance whereby American agreed to pay the Respondent $3000. The settlement agreement was introduced into evidence by the Respondent as part of its defense. There were no allegations in the complaint concerning the settlement agreement, nor did counsel for the General Counsel request any remedy involving the settlement agreement. In fact, counsel for the General Counsel did not even consider the settlement agreement relevant to the litigable issues in the case, as evidenced by his objections at the hearing to both the introduction of the settlement agreement and any questions relating to the settlement agreement asked by Respondent's counsel to witnesses. Although the judge characterized the $3000 settlement as "exorbitant" and an "apparent Section 302 violation," he based his characterization on his belief that Respondent's liability under the grievance was much less than $3000 and that Respondent did not reimburse to Woodruff or any other employee his respective share of back wages included in the $3000 figure. However, it is unclear exactly what monetary liability American had under the grievance, how or on what basis Respondent calculated American's liability to be $3000, or what Respondent did with the $3000. Under these circumstances, we are unwilling to look behind a settlement agreement voluntarily entered into by the parties, especially where, as here, no party has asked us to set aside the agreement or litigate at the hearing any issue pertaining to the propriety of the agreement. Accordingly, we hereby delete from the judge's recommended remedy the requirement that Respondent tender to Woodruff any portion of the 11 February 1982 or subsequent grievance settlements, and we disavow all of the judge's remarks concerning the 11 February 1982 settlement agreement.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Road Sprinkler Fitters, Local 669, U.A., AFL–CIO, its offi-

[1] The Respondent excepts to the judge's finding that employees Larry Wright and Roger Norman were union members and that the Respondent had no objection to their employment by American Automatic Fire Protection, Inc. (American). We find merit in this exception. The record reveals that, although Wright and Norman were employed in bargaining unit positions, there is no evidence that they ever tendered dues to the Respondent through the dues-checkoff provision of the collective-bargaining agreement between the Respondent and American or through any other means. Moreover, it appears that the Respondent did not condone American's employment of Wright and Norman at wage rates below those specified in the collective-bargaining agreement, as evidenced by the Respondent's filing a grievance over American's failure to adhere to the contractual wage and benefit provisions and American's discharge of Wright and Norman immediately after the filing of the grievance. However, the judge's incorrect characterization of Wright and Norman as union members and of the Respondent's condonation of their employment does not in any way affect the validity of the other reasons given by the judge, with which we agree, for finding that the Respondent denied employee Raymond Woodruff's membership on some ground other than his failure to tender periodic dues and initiation fees. Accordingly, we agree with the judge that the Respondent's action in causing American to discharge Woodruff because he was not a member of the Respondent was violative of Sec. 8(b)(2) of the Act.

[2] The grievance was not introduced into evidence.

[3] As the judge made no reference to the 11 February 1982 settlement agreement in his recommended Order, no amendment of his Order is necessary.

cers, agents, and representatives, shall take the action set forth in the Order.

DECISION

STATEMENT OF THE CASE

ROBERT A. GRITTA, Administrative Law Judge: This case was tried before me on August 5 in Tulsa, Oklahoma, based upon a charge filed by Raymond D. Woodruff, an individual (herein the Charging Party), on April 23, 1982, and a complaint issued by the Regional Director for Region 16 of the National Labor Relations Board on May 20, 1982.[1] The complaint alleges that the Road Sprinkler Fitters, Local 669, U.A. (herein the Respondent), violated Section 8(b)(2) of the Act by causing American Automatic Fire Protection, Inc. (herein the Employer), to discharge employee Woodruff, because Woodruff was not a member of the Respondent. The Respondent's timely answer denies the commission of any unfair labor practices.

All parties hereto were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence, and to argue orally. Briefs were submitted by the General Counsel and the Respondent. Both briefs were duly considered.

Upon the entire record in this case and from my observation of the witnesses and their demeanor on the witness stand, and upon substantive, reliable evidence considered along with the consistency and inherent probability of testimony, I make the following

FINDINGS OF FACT

I. JURISDICTION—STATUS OF LABOR ORGANIZATION—PRELIMINARY CONCLUSIONS OF LAW

The complaint alleges, the Respondent admits, and I find that American Automatic Fire Protection, Inc., is an Oklahoma corporation engaged in the construction industry as an installer of fire protection equipment in Oklahoma. Jurisdiction is not in issue. American Automatic Fire Protection, Inc., in the past 12 months, in the course and conduct of its business operations purchased and received at its Oklahoma facility, goods and materials, valued in excess of $50,000 directly from points located outside the State of Oklahoma. I conclude and find that American Automatic Fire Protection, Inc., is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, the Respondent admits, and I conclude and find that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND

American Automatic Fire Protection, Inc., Tulsa, Oklahoma, the Employer herein, was incorporated in March 1981 by its owner and president, Harry Horton, who also is a journeyman member of the Respondent. Subsequent to incorporation, Horton signed the existing national agreement between the National Automatic Sprinkler and Fire Control Association, Inc., and the Respondent. The bargaining unit represented by the Respondent consists only of installers. Employees who fabricate the systems are not in the bargaining unit. The national agreements' term was April 1, 1979, to March 31, 1982. Several articles of the national agreement, including wage rates, welfare fund, and pension fund, were amended, effective April 1, 1981, and terminating with the national agreements' term on March 31, 1982. At the time Horton executed the national agreement he did not employ any employees. The Respondent pursuant to the national agreement has 48 hours to supply men and failing such referral the employer is free to hire from any source. On March 8 the Employer executed an interim contract with the Union concerning extension of the existing contract. Upon expiration of the national agreement on March 31, 1982, the Respondent engaged in a strike of several fire protection companies, however, the instant Employer was not a target of the strike. The strike lasted until April 13 at which time a new national agreement was consummated. The Respondent covers the 50 States from its national office in Adelphi, Maryland, through business agents elected to Regional positions. At the time of the events herein J. R. Lively was the Respondent's business agent responsible for the States of Oklahoma, Kansas, and the southern half of Missouri. Lively was replaced as business agent, through an election process, by Paul Alewine on July 1.[2]

The Discharge of Raymond D. Woodruff

Harry Horton testified without contradiction that he hired his first employees Larry Wright and Roger Norman in late 1981. They were union members and worked as fabricators and installers.[3] Wright did both fabrication and installation whereas Norman did only installation. Although an installer scale in the contract was $14.68 an hour, plus fringes, Horton paid Wright and Norman $10 an hour and performed journeyman work himself. From December 1981 through mid-January 1982, Horton employed only Wright and Norman. In mid-January Horton hired Raymond Woodruff off the street to fabricate and install paying him the same $10 wage.[4] During this December and January period Horton did not pay fringes to the Respondent for the hours worked by Wright, Norman, or Woodruff when each was doing installation work. Horton did pay the fringes to the Respondent for his hours worked as a journeyman installer. Two weeks after Woodruff's hiring Horton was asked by Woodruff if there was a union contract. Horton responded affirmatively and Woodruff asked how to join the Union. Horton showed Woodruff article 4 of the contract which specified the eligibility. Horton told Woodruff to get the necessary paperwork

[1] All dates herein are in 1982 unless otherwise specified.

[2] The above is based on the objective evidence in the record in conjuction with uncontroverted testimony.

[3] The Respondent's terminology for an installer is journeyman sprinkler fitter and the installation of the sprinkler systems is the only work subject to the contract.

[4] The Respondent could not supply any local men and Horton was unwilling to pay a $29-a-day subsistence to get employees from Kansas or Missouri.

and supplied Lively's telephone number. At this same time the Employer and the Union was in the process of settling a grievance over installers being paid subcontract scale. Horton concealed Woodruff's employment from the Union but the following week deducted union dues from Woodruff's check. Woodruff was also engaged in installation work at subscale and on February 9 was sent to the unit rig jobsite to do installation work. Horton arrived at the jobsite at the same time as Lively and before Woodruff appeared. Lively asked Horton who was working there and Horton responded, "no one" Horton left, contacted Woodruff, and told him not to go to the jobsite because Lively was there. Horton later sent Woodruff to the unit rig jobsite to install the systems telling Woodruff to keep an eye peeled for the union man. Horton also laid off Wright and Norman leaving Woodruff as his only employee.

Thereafter, Lively went to Horton's office and told Horton that he had information that Woodruff was working on the unit rig job. Lively told Horton to "stop that now" and Lively did not want Woodruff in the field anymore. Horton told Lively he needed an installer and Lively said he would get one. Horton, approximate to this time, offered the union dues he had deducted from Woodruff's February 5 pay to Lively. Lively would not accept the dues and told Horton to forget "it," it's not going to do any good. Horton in response to Lively's request furnished to the Union the pay stubs for Norman during December 1981 and January 1982 and for Woodruff during January and February 1982. Wages owed and fringe payments calculated on the basis of the pay stubs totaled $1332.31. However, Lively on reconsideration after consultation with the Union's home office in Maryland offered to settle the grievance "only" with a payment of $2000. Horton questioned the new figure and Lively stated, "Well, we don't give a damn what you paid those men, we figure that $3000.00 is the full union scale, regardless of what you paid them, plus the benefits." Lively told Horton, "What you have already paid the men you're just out of luck." Horton agreed to pay the $3000 in installments which was accepted by the Union on 2-11-82 as settlement of the grievance.[5]

On February 15, Horton hired Gallagher through a union referral. Horton contacted Lively complaining of Gallagher's attendance and Lively stated, "if he don't work out for you get rid of him. I'll find you somebody else."

On March 8, Horton executed an interim agreement offered by the Union pending finalization of the new national agreement. Pursuant to Horton's suggestions and article 4 of the contract, Woodruff sought and received letters from his past employer evidencing his journeyman skills as an installer. Woodruff presented the letters to Horton who in turn during March attempted to present them to Lively. Lively. Lively refused to even view the letters in Horton's possession.

In mid-March Horton was discussing his plight of lack of good employees from the hall when Woodruff entered the company office. Horton suggested to Lively that Woodruff obtain membership in the Union whereupon Lively stated, "He is not getting in the Union because he is a liar." Lively added that he (Lively) could not do anything about Woodruff until all his men were employed and a new contract was negotiated. Horton terminated Gallagher and Lively said he would find a new man. Later Lively informed Horton that a new man, Jarvis, was being referred. Jarvis had not arrived by the 18th when a work situation arose. Horton needed a man to move a system previously installed at the Apple Mill restaurant jobsite. The system conflicted with an air-conditioning duct just installed. Woodruff was Horton's only employee so Horton sent him to Apple Mill. Horton was out of town during that day but Lively contacted him by the phone that evening about 11 p.m. Lively told Horton that Younger, a union committeeman, had caught Woodruff working on the Apple Mill jobsite. As a result Younger had filed a grievance against the Company over Woodruff's performing installation work.[6] Lively said he would hold the grievance in the file if Horton got rid of Woodruff completely. Lively stated that he wanted Woodruff out of the field, out of the job shop, and not on the payroll at all. The following day Horton went to the job shop and told Woodruff what had transpired and terminated Woodruff at that time. At this time Horton was engaged in two jobs, unit rig and Apple Mill.

Jarvis subsequently reported for work and Horton hired him. In March after Jarvis was employed Horton conversed with Lively in the company parking lot. During the conversation Lively asked Horton, "You aren't working Woodruff are you?" Horton responded that since hiring Jarvis there was no additional work for Woodruff or anyone else. During April, eight additional installers were referred to Horton and each worked a day or two during the month. Horton also hired Woodruff on April 16 for fabrication work when Woodruff reappeared for reemployment.

Raymond Woodruff testified that he had 6 years' experience in sprinkler installation on construction jobs. Prior to working for the instant Employer, Woodruff was employed by Lodi Fire Company for 5 months and Ace Sprinkler Company for 2 years 8 months in California, installing automatic fire systems. He was a journeyman fitter or a foreman during such employment. Woodruff left California and returned to Tulsa, where he was employed by Bill Story Safety Systems installing automatic fire suppression systems. He worked for Story for 9 months. After Christmas 1981 Woodruff sought employment from the instant Employer and was hired in mid-January 1982 at $10 an hour. Woodruff later received $11 an hour. Within 2 weeks Woodruff learned that Horton was a union contractor. He asked Horton what the work situation was to be since he did want to join the Union and receive the union wage and other benefits. Horton agreed to help Woodruff get into the Union and gave him the phone number of J. R. Lively, the union

[5] Lively's insistence on an exorbitant amount to settle the grievance, although reprehensible, is not justiciable in this case, albeit the remedy requested by the General Counsel must include the Respondent's grievance conduct prior to the termination. To do otherwise would be tantamount to disregard of the Act and its several provisions.

[6] It is not entirely clear in the record but there was a reference to Gallagher's (the prior employee) joining Younger in the grievance.

business agent. Horton admonished Woodruff to conceal his employment from Lively. Horton suggested, "tell him that Horton would hire you if you were in the Union and had a union card."

Woodruff did call Lively and told him he was a nonunion sprinkler fitter and gave him his work history in California and at Story's Tulsa. Woodruff expressed to Lively his wish to join Local Union 669. Lively told Woodruff that he would have to produce check stubs to show 4 years' worktime as a journeyman. Woodruff told Lively he did not have check stubs but he could get letters from his previous employers. Lively responded that the letters were not good enough, he had to have the check stubs.

The following day Woodruff informed Horton of Lively's requirement that Woodruff produce 4 years of check stubs to evidence his journeyman status. Horton told Woodruff to drop it, that he would take care of it. Horton pulled out the union contract and read article 4 to Woodruff. Horton stated, "He can't keep you out on the check stubs part because that's no where in negotiations."

On February 9 Woodruff was sent to the unit rig job to install systems. After working a short while he left to go to Cooper Supply Company up the street for additional material. When Woodruff returned he saw Horton. Horton explained that Lively had been to the jobsite and knew that Woodruff had been doing the installation. Woodruff was sent to the fab shop to work the remainder of that day. The days following Woodruff remained in the fab shop.

On February 12 Woodruff called Lively about joining the Union. Lively during the conversation asked Woodruff how long he had worked for Horton, who else worked for Horton, where he had worked for Horton, and the specific number of hours he had spent on the unit rig job. Lively told Woodruff if he gave the answers to the questions that he would probably be let into the Union. Woodruff gave evasive answers to Lively's questions and Lively stated he would not let Woodruff in the Union because he was a liar and a scab.

A week later on February 19, Woodruff went to Horton's office. Lively was present and as Woodruff came in Horton stated to Lively, "Hey, why don't we sign this kid up, get him in the Union, and get him working here." Lively responded, "No, I'm not going to do it, he's a liar." Thereupon, Woodruff left the office. Later Woodruff returned to Horton's office. Lively called to him by name and said, "I'm not going to keep you fron joining the Union but I'm not going to let you in until after April 1 or until after the strike, if we have a strike, and it's settled." Woodruff replied, "Okay." Lively told Woodruff to get all his letters together and have them ready when the strike is settled.

Woodruff's journeyman experience with prior employers included: Ace Sprinkler where he accumulated 2 years 8 months; Bill Story's where he accumulated 8 months; Lodi Fire where he accumulated 5 months; and the instant Employer where he accumulated as of the presentation to Lively, 2 months.[7]

In mid-March Horton experienced a minor emergency at the Apple Mill jobsite. Previously installed sprinkler pipe was in the way of air-conditioning ductwork. Gallagher had been laid off and Woodruff was the only employee with installation experience. Horton sent Woodruff to the job to correct the problem telling him to keep an eye out for the union man. While working at Apple Mill Woodruff was approached by a man who asked him if he had a union card and if he was installing a sprinkler system. Woodruff replied, "no." The man asked Woodruff if he was working for Harry Horton. Woodruff told the man to figure it out. The man then asked Woodruff for his name. Woodruff answered, "tell me yours and who you are." The man responded, "I'm Younger, a committeeman for the Union, are you, Bo." Woodruff said yes. Younger seemed satisfied and left. Woodruff was finishing the job while this conversation was ongoing, so he locked up his tools and left the jobsite. He attempted to contact Horton but was unable to do so.

The next day, March 19, Woodruff went to Horton's office. Horton said he was going to have to let Woodruff go because Lively wanted him completely away from the Company because he (Lively) could not trust him. Woodruff got his final pay and left the premises.

Woodruff was aware of the strike during his unemployment and the day it ended he called Lively on the phone. Woodruff testified that the conversation was, "Mr. Lively I've called again, I've heard the strike has been settled and I called to talk to you about joining up, like we had earlier discussed." Lively said, "Yes we were just talking about you. You couldn't keep off the union jobs, so I'm not letting you in." Woodruff then read article 4 of the contract to Lively. Lively said, "Let me read you something." Lively read off a phone number and said, "this is my boss, call him, tell him what a S.O.B. I am." Lively then hung up the phone. Woodruff did not attempt any further contact with Lively.[8]

During his unemployment Woodruff learned that a union could not have him terminated. He called Horton seeking employment and Horton hired him April 16 to run errands and fabricate systems. Several union members were hired in April for both fabrication and installation work and Woodruff himself did some installation work. In June and July Woodruff installed systems on the Safeway job which was a new job for Horton. Woodruff's wage upon rehiring was the same as before, $10 or $11 an hour.

Analysis and Conclusions

The General Counsel contends that the Respondent violated Section 8(b)(2) of the Act by causing the discharge of Woodruff, an employee working in a bargaining unit represented by the Respondent. Concurrently the Respondent denied Woodruff's application to join on "grounds other than his failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership."

[7] Woodruff previously received letters from Ace and Story's evincing 3 years', 4 months' journeyman experience. The addition of Lodi and the instant Employer would augment his total to 3 years, 11 months. Further his testimony shows 6 years' experience in the construction industry.

[8] Lively was not called to testify nor was he in attendance.

The Respondent argues that Lively was attempting to enforce the collective-bargaining contract and preserve its integrity. The Respondent in brief admits that Lively sought, and attained, Woodruff's termination but contends there is no evidence that the termination was sought because he was not a union member or because he was engaged in any activity protected by the Act.

The Act proscribes discrimination between union and nonunion employees in a manner that tends to encourage union membership. When an employee is denied union status by a union and as a result of this nonunion status is caused to be discharged by the union the unlawful discrimination is apparent. However, the inquiry does not end there, for the Board has stated, "When a union prevents an employee from being hired or causes an employee's discharge, it has demonstrated its influence over the employee and its power to affect his livelihood in so dramatic a way that we will infer—or, if you please, adopt a presumption that—the effect of its action is to encourage union membership on the part of all employees who have perceived that exercise of power. But the inference may be overcome, or the presumption rebutted . . . in instances where the facts show that the union action was necessary to the effective performance of its function of representing its constituency."[9] Thus the General Counsel's prima facie case in support of the presumption can be rebutted by a preponderance of competent, credible evidence.

The General Counsel must first present a prima facie case. The evidence shows and the Respondent admits that Lively sought Woodruff's discharge from the Employer. The Employer acted upon the Union's demand and discharged Woodruff. Further the record clearly shows that Woodruff applied to Lively for membership on more than one occasion and the Employer also attempted to facilitate Woodruff's membership in the Union. On each occasion, Lively either stated additional requirements necessary to membership which were outside the contract or flatly denied that Woodruff would get membership in the Union. At no time did Lively follow the contractual procedure which specifically made provision for nonunion employees to join the Union nor did Lively raise any questions about Woodruff's application based on his failure to tender dues or an initiation fees. Therefore, the General Counsel has presented a prima facie case of the Union causing an employer to discriminate against an employee in violation of Section 8(a)(3).

What remains for determination is an evaluation of Lively's conduct in terms of his real motive, not only that expressed in the Respondent's brief, but a motive inferred from the entirety of his actions.

The Respondent in brief questions Woodruff's eligibility and journeyman experience as a defense of the discharge but the record fails to disclose that Lively in his confrontations with Horton or Woodruff raised such questions. In fact, the record discloses the opposite, that Lively was not concerned with Woodruff's experience or eligibility but rather was only concerned with a nonunion employee's doing union work on a union job. If Lively were truly concerned about Woodruff's eligibility for membership based on his journeyman experience he would have determined Woodruff's eligibility according to the contract rather than arbitrarily denying such consideration to him.

The Respondent's argued concern for the integrity of the contract is tainted by the manner and means employed by Lively. Albeit Lively did associate Horton's work practices with Woodruff's employment the evidence does not conclusively sustain the Respondent's espoused motive. The failure of Lively to consider Woodruff for membership and his threat to Horton of an additional grievance over Horton's work practices if Woodruff is not terminated from all employment is probative of the Union's motive and shows that the objective was to condition further employment of installers on union membership and union referral. In the January instance of union referral Lively attempted to burden Horton with the more expensive per diem for members hired outside the Tulsa area which was a newly negotiated item for the national agreement to be effective April 1, 1982. At the time the current contract contained no such provision. Moreover, Lively did not object or question the prior work practices associated with Norman and Wright except to include Norman's subcontract wage differential in the original calculations to settle the grievance against Horton.[10] In my view, it is instructive of Lively's overall purpose to note that neither Norman nor Woodruff received any wage differential from the exorbitant settlement amount demanded by Lively in the February grievance. Further Lively expressly intended that Horton hire only union members who were out on strike in contravention of both his own contract and the law rather than admit Woodruff to membership and continued employment.

The Respondent's collateral arguments that Woodruff was laid off due to lack of work and Woodruff's admitted ineligibility to perform bargaining unit work or that Horton has made Woodruff's employment impossible by failing to register him in the apprenticeship program are unavailing. Woodruff when terminated was replaced by a union member, Jarvis, referred by Lively. The record, rather than containing any admitted ineligibility of Woodruff to perform unit work, shows clearly that Woodruff was not only able to perform union work but did so more satisfactorily than union members referred by the Union and always to the complete satisfaction of the employer. In the last analysis and in accord with the contract it is the employer who must be satisfied with a prospective employee's or union member's eligibility experience, or ability to perform.[11] The Respondent does correctly state one proposition in its brief, "Woodruffs membership or nonmembership in local 669 is irrelevant to this employability by the employer." The Respondent may allow or disallow membership in its Union to

[9] *Operating Engineers Local 18 (Ohio Contractors)*, 204 NLRB 681 (1973).

[10] As the Respondent notes in its brief Norman and Wright were performing the same work as Woodruff and at the same wage but Lively had no objection to their continued employment.

[11] The contract expressly makes proof of an employee's past experience to satisfy membership eligibility a matter for the Employer, not the Union. The Union merely becomes a depository for the probative material after the Employer's determination.

Woodruff but if it withholds membership from Woodruff it cannot object to his employment in the bargaining unit nor can it seek his termination because under the Act Woodruff has the unequivocal right to employment free from union discrimination either directly or indirectly.

I am mindful of the Supreme Courts pronouncement in the *Ford Motor* case, i.e., "A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion."[12] In my view, Lively acted completly outside the acceptable range of reasonableness and bordering on complete bad faith and dishonesty.

I conclude and find in view of the above that the Respondent, through its agent J. R. Lively, did direct Horton to terminate Woodruff, that it did so because Woodruff was not a member of the Respondent, and that it did so after repeatedly denying Woodruff membership in the Respondent's Union. The Respondent therefore acted in violation of Section 8(b)(2) of the Act and I shall order the violation remedied.

Since it is the Board's duty to recognize other statutes and purposes in its enforcement of the National Labor Relations Act[13] other sections of its own Act cannot be allowed to waste away in a vacuum. Notwithstanding, that this is not the proper forum there is a nexus between the events in this record and the proscriptions in Section 302(a)(1)(2) and Section 302(b)(1). The General Counsel seeks backpay and reinstatement herein. Neither can appropriately be ordered without consideration of the apparent Section 302 violation. Particularly, considering the facts that the Respondent's settlement of a prior grievance based in part on Woodruff's employment did not ensure to the benefit of employees Woodruff or Norman as it should have and the continuing provocation of grievances that could occur if Woodruff is not admitted to membership after having gained reinstatement. The Respondent has once demonstrated its proclivity to exact money in excess of the Employer's liability and for its sole gratification, not that of the bargaining unit employees. Accordingly, I shall consider the past settlement of the grievance and any future prospects of grievance settlements in my remedy.

ADDITIONAL CONCLUSIONS OF LAW

1. By causing and attempting to cause American Automatic Fire Protection, Inc., to terminate the employment of Raymond D. Woodruff because he was not a member, the Respondent violated Section 8(b)(2) of the Act.
2. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As Woodruff has been rehired, I shall recommend that the Respondent notify American Automatic Fire Protection, Inc., and Raymond D. Woodruff, in writing, that it has no objection to the continued employment of Woodruff in a bargaining unit position.[14] The Respondent shall also effectuate expunction of Woodruff's discharge from the Employer's personnel files.[15] It is also recommended that the Respondent be required to make Woodruff whole for any loss of earnings he may have suffered by reason of its unlawful conduct in causing his termination on March 19, 1982, with backpay computed on a quarterly basis and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB (1977),[16] from March 19, 1982, the date of discharge to April 16, 1982, the date of Woodruff's rehiring.

In addition as part and parcel of the backpay liability the Respondent must tender to Woodruff the difference between his actual wages during the months of January and February 1982 and the contract wages of $14.86 an hour based upon the grievance settled between the Employer and the Respondent on 2-11-82. Should any grievance based upon the Employer's failure to pay contract wages or fringes be processed to satisfaction for the period 2-11-82 to the present time or any time in the future the employees affected thereby, including Woodruff, shall be paid the difference between the actual wage and the contract wage as calculated in determining the grievance including interest until paid.

On the foregoing findings of fact and conclusions of law and on the entire record, and pursuant to Section 10(c) of the Act, I issue the following recommended

ORDER[17]

The Respondent, Road Sprinkler Fitters, Local 669, U.A., its officers, agents, and representatives, shall

1. Cease and desist from

(a) Causing or attempting to cause American Automatic Fire Protection, Inc., to discharge Raymond D. Woodruff in violation of Section 8(a)(3) of the Act.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify American Automatic Fire Protection, Inc., and Raymond D. Woodruff, in writing, that it has no objection to the continued employment of Woodruff in a bargaining unit position and ask the Employer to remove any reference to Woodruff's unlawful discharge from its files and notify Woodruff that it has asked the Employer to do this.

[12] *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953).

[13] *Western Community Organization v. NLRB*, 485 F.2d 917 (D.C. Cir. 1973).

[14] The Respondent's May 7 telegram to Horton is insufficient in that it conditions Woodruff's continued employment in the bargaining unit.

[15] *R. H. Macy & Co.*, 266 NLRB 858 (1983).

[16] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Make Raymond D. Woodruff whole for any loss of pay he may have suffered by reason of the discrimination against him, in the manner set forth in the section of his decision entitled, "Remedy."

(c) Preserve and, upon request, make available to the National Labor Relations Board or its agents for examination and copying, all Employer reports for payment of contract fringes, grievance reports, and determinations including settlements of grievances and all other records necessary to effectuate the backpay provisions of this Order.

(d) Post at its union offices in Tulsa, Oklahoma, and Adelphi, Maryland, copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days thereafter in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply. The Regional Director shall supply copies of the below notice to the American Automatic Fire Protection, Inc. for posting if such posting is desired.

[18] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a trial at which all parties had an opportunity to present evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT cause or attempt to cause American Automatic Fire Protection, Inc., to discharge Raymond D. Woodruff in violation of Section 8(a)(3) of the Act.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights guaranteed under Section 7 of the Act.

WE WILL notify American Automatic Fire Protection, Inc., and Raymond D. Woodruff, in writing, that we have no objection to the continued employment of Woodruff by American Automatic Fire Protection, Inc., in a bargaining unit position.

WE WILL make Raymond D. Woodruff whole for any loss of pay he may have suffered by reason of the discrimination practiced against him.

ROAD SPRINKLER FITTERS, LOCAL 669,
U.A., AFL-CIO